IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5158 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHAMMADSALAM MOHAMMAD SALAMATKHAN SABJIFAROSH
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 5158 of 2002
MR AR SHAIKH for Petitioner No. 1
MR AY KOGJE Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner Surat City, dated 21.1.2002 in exercise of powers vested under him by

sub-section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

Ld. AGP Mr Kogje has filed the affidavit of Mr. VK Gupta, Police Commissioner, Surat City. The same is taken on record.

At the time of executing the order of detention, the petitioner has been served with the grounds of detention and he has been branded as bootlegger. The bunch of papers supplied to the detenu with the grounds for detention indicates that the petitioner was involved in two different criminal cases punishable under sec. 66(1)(B) and 65(E) with Varachha Police Station on 1.7.2001 and 8.1.2001 respectively. The detaining authority has placed reliance on the registration of these two criminal offences and the statements recorded by the Police Inspector, Varachha Police Station, Surat City on 10.1.2002 and 11.1.2002. The facts reveal by these two unnamed witnesses is one of the back-bone of the grounds for detention.

Ld. counsel for the petitioner Ms. Banna Datta has taken me through the number of grounds assailing the legality and validity of the order, however, she has concentrated the arguments mainly on one ground and has submitted that the order under challenge has been passed without proper application of mind and, therefore, such an order cannot sustain as per the settled legal position. In the grounds for detention-page 23, the authority has referred the statement of unnamed witness whose statement was recorded on 11.1.2002. The entire para-2 creates impression that the alleged incident narrated by this unnamed witness had occurred on 11.1.2002 at about 8.30p.m. but the statement of this witness which is at page 73 as narrated, clearly shows that incident had occurred on 28.6.2001. Though this statement has been verified by the detaining authority on 19.1.2002, the correct facts as to the date of occurrence of the incident is not found in the grounds for detention served to the detenu. The day 19th January, 2002, was a working Saturday in the offices of the State Government. The next day i.e. 20th January, 2002 was Sunday-a holiday and on 21.1.2002 the order under challenge has been passed. The conflict of facts between original statements and the narration of the incident found in the ground of detention clearly shows that some haste has been made which has resulted into improper application of mind or non-application of mind.

The ratio of the decision in the case of Kajalben G. Sindhi vs. Commissioner of Police, Ahmedabad reported in 2000(1) GLH p. 320, para-10 and in the case of Bai Amina w/o Ibrahim Abdul Rahim Alla vs. State of Gujarat & Ors., reported in 22 GLR p. 1186 applies in view of the above stated facts situation. It can legitimately argued that this conflicting situation of facts may create confusion in the mind of the detenu resulting into an obstruction in making effective representation also. It is important to note that this confusion found in the papers has not been explained by the detaining authority in the affidavit. For short, in such a situation, the order of detention cannot sustain and, therefore, the petition shall have to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 21.1.2002 passed by Police Commissioner, Surat City, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)

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